

STATE OF MICHIGAN
COURT OF APPEALS

J.D.'s PUB & GRUB, INC.,

Plaintiff-Appellee,

v

NORTH POINTE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

August 8, 2006

No. 256634

Wayne Circuit Court

LC No. 04-304726-CK

Before: White, P.J., and Jansen and Wilder, JJ.

WHITE, P.J. (*concurring*).

I agree that the "Other Insurance" clause is inapplicable by its terms and on the facts. Further, I observe that defendant's statutory argument distinguishing *Lubetsky v Standard Fire Ins Co*, 217 Mich 654; 187 NW 260 (1922), based on MCL 500.2833 was not raised below. Lastly, defendant's argument that plaintiff's financial loss is measured by the amount it had paid on the land contract at the time of the fire is unsupported.

/s/ Helene N. White